


















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OFFICE OF THE
EXECUTIVE SECRETARY

DIRECT TESTIMONY OF JOHN M. IVANUSKA
ON BEHALF OF BIRCH TELECOM OF THE SOUTH, INC.

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1

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

**In the Matter of Petition Of Tennessee UNE-P
Coalition To Open Contested Case Proceeding To
Declare Unbundled Switching An Unrestricted
Unbundled Network Element**

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DOCKET NO. 02-00207

**PREFILED DIRECT TESTIMONY OF JOHN M. IVANUSKA
ON BEHALF OF BIRCH TELECOM OF THE SOUTH, INC.**

I. BACKGROUND AND EDUCATION

Q. Please state your name, business address and occupation.

A. My name is John M. Ivanuska. My business address is 2020 Baltimore Avenue, Kansas City, Missouri 64108. I am the Vice President of Regulatory and Carrier Relations for Birch Telecom, Inc. and its subsidiary, Birch Telecom of the South, Inc. (collectively “Birch”).

Q. What are your responsibilities associated with your current position?

A. I oversee all regulatory matters for Birch, at both the state and the federal level. I help formulate and advocate regulatory policy and prioritize those regulatory issues in which Birch will engage. In addition, I manage all facets of Birch’s interactions between Birch and its Regional Bell Operating Company

1 (“RBOC”) vendors, Southwestern Bell Telephone Company (“SWBT”) and
2 BellSouth Communications Corporation (“BellSouth”).
3

4 **Q. Please describe your educational background and related experience.**

5 A. I graduated cum laude from the State University of New York at Buffalo (SUNY
6 Buffalo) where I received a Bachelor of Science degree in Accounting. I also
7 received a Masters of Business Administration with a concentration in Finance
8 from SUNY Buffalo.
9

10 From March 1984 through March 2000, I held various positions within the Local,
11 Wireless, Competitive Local Exchange Carrier (“CLEC”), and Corporate Staff
12 organizations of Sprint Corporation, including the positions of Rates and Tariffs
13 Manager, Director of Regulatory – Texas, Director of Federal Regulatory Policy,
14 Director of State Regulatory Policy – Sprint PCS (Sprint Spectrum, L.P. at the
15 time), and Director - Local Markets (Sprint NIS). In these various positions, I
16 was directly involved in a host of telecommunications business matters from both
17 a strategic/policy vantage point, as well as a tactical/operational vantage point.
18

19 **Q. Were any of these assignments specific to the CLEC sector of the**
20 **telecommunications industry?**

21 A. In my final assignment prior to leaving Sprint, as Director – Local Markets
22 (Sprint NIS), I was responsible for the negotiation, arbitration, and
23 implementation of interconnection agreements with incumbent local exchange

1 carriers (“ILECs”) GTE and SWBT in support of Sprint’s CLEC initiatives. In
2 implementing these interconnection agreements, I was tasked with ensuring that
3 Sprint was to a level of “market entry readiness” that it was sufficiently capable of
4 operating in the CLEC marketplace in a way that did not place the Sprint brand
5 name at risk. Once operational, I managed all interactions with Sprint’s ILEC
6 suppliers for these CLEC initiatives.

7 **Q. Have you ever testified before any regulatory bodies?**

8 A. Yes. I have previously testified before the Public Utility Commissions in Texas,
9 Kansas, Missouri, California, Illinois, Indiana, Hawaii, Maine, New Hampshire,
10 New York, Pennsylvania, North Carolina, Florida, and Puerto Rico. I have also
11 delivered several ex parte presentations to the Federal Communications
12 Commission on a variety of topics.

13
14 **II. BACKGROUND OF BIRCH TELECOM**

15 **Q. Please provide a brief description of Birch’s history and current operations.**

16 A. Established in 1997, Birch Telecom, Inc. is a multi-regional provider of local,
17 long distance, and data services, serving both business and residential customers
18 in the SWBT and BellSouth regions. Specifically, Birch provides service to
19 customers in Missouri, Kansas, Oklahoma, Texas, Georgia, Tennessee, Alabama,
20 North Carolina, South Carolina, Kentucky and Mississippi.

21 Birch is a privately held corporation with its headquarters in Kansas City,
22 Missouri. It employs nearly 1,200 persons, including nearly 200 in the Southeast
23 part of the country.

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Currently, Birch serves over **** REDACTED **** local access lines throughout its ten state region. Tennessee is one of Birch's key markets, with over ****REDACTED**** access lines, serving small to medium-sized businesses and residential customers. Approximately 90% of Birch's total access line count and 100% of its Tennessee local dial tone line count are served via the Unbundled Network Element Platform ("UNE-P" or the "Platform").

In addition, Birch has more than 150 collocation arrangements in various SWBT central offices in Missouri, Kansas, Oklahoma and Texas. Birch currently utilizes these collocation arrangements to physically locate equipment that supports the offering of its stand-alone facilities-based data services, primarily high-speed Internet service via DSL (Digital Subscriber Line). These collocation arrangements are interconnected in hierarchical network fashion through the lease of intraoffice and interoffice transmission facilities from SWBT, with consolidated connections to Birch's core data network at centralized locations. Birch intends to deploy a similar network in the BellSouth region once it has developed the revenue and customer base necessary to support such a deployment.

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III. PURPOSE OF TESTIMONY

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to explain the role UNE-P has played in Birch's success to date, and to describe the environment that currently exists for procurement of the local switching functionality from a supplier other than BellSouth. Based on these factors, I will also urge the Authority to continue to require that BellSouth provide unbundled local switching pursuant to the federal Communications Act of 1934 and Tennessee state law. The continued availability of UNE-P is critical for Birch to fully implement its long-term business plan, which is to deploy a next-generation facilities-based network that finally will allow facilities-based competition to serve the "mass market" – customers like Birch's very small business customers.

Q. To date, how has Birch utilized UNE-P in its operations?

A. The market expansion success Birch was able to achieve using UNE-P in the SWBT region enabled Birch to further expand its UNE-P operations into the BellSouth region beginning in January 2001. This expansion to another RBOC region was particularly noteworthy due to the fact that, at that time, the CLEC sector of the telecommunications industry was in the midst of what was becoming an increasingly difficult capital market. Although Birch needed to undertake significant initial startup efforts to achieve a state of "operational readiness" with an entirely different set of OSSs, such an expenditure was justified because of the fact that UNE-P was a low-cost (transactions-wise and capital expenditure-wise)

1 and operationally efficient means of service procurement from BellSouth. Again,
2 due to the realities of the difficult capital environment that Birch was facing at the
3 time, geographic expansion into the BellSouth region would not have been
4 economically viable, and would not have occurred, absent UNE-P.

5 As mentioned previously, Birch's total access line count of over
6 ****REDACTED**** including over ****REDACTED**** access lines in Tennessee,
7 is served almost exclusively via UNE-P. Birch's typical customer is a business
8 with roughly four lines, although Birch serves many customers with more than
9 four lines. Birch also serves residential customers utilizing UNE-P.

10
11 Early on in its evolution, Birch deployed circuit switches in Kansas City and St.
12 Louis, Missouri and Wichita, Kansas. However, Birch discovered that it was
13 nearly impossible to use those circuit switches and individual UNE loops to serve
14 the lower end of the market – small business and residential customers. For
15 Birch, the high costs and the provisioning difficulties inherent in cutting over
16 individual loops were exacerbated by the fact that Birch was handling large
17 volumes of small orders (as compared to many other CLECs with circuit
18 switches, which concentrated on small numbers of very large customers). As a
19 result of that experience, Birch tested and then implemented the provision of retail
20 local dial tone service via the use of UNE-P provided by SWBT. Once this initial
21 phase was successful, Birch was able to readily expand geographically to
22 numerous large and not-so-large markets throughout the Southwestern Bell
23 region. This geographic expansion occurred in new markets that would not have

1 otherwise been economically viable absent UNE-P. In short, adding another
2 market using the same supplier (Southwestern Bell) via common Operations
3 Support Systems and utilizing the same platform (UNE-P), was incrementally
4 very straightforward because it was essentially “more of the same” from an
5 operational standpoint. It is this sort of evolutionary approach that paved the way
6 for Birch’s entry and operation in the BellSouth region.
7

8 **Q. How has Birch’s reliance upon UNE-P as a market expansion strategy**
9 **advantaged Birch relative to alternate strategies that rely primarily or**
10 **exclusively through the deployment of its own facilities?**

11 A. With UNE-P as the primary procurement vehicle, Birch was able to justify to its
12 investors its plans to: (1) geographically expand into a second RBOC region
13 (BellSouth), (2) serve mass market customers, such as very small businesses, (3)
14 serve everywhere in a city, not just in the downtown business district or densely
15 populated suburban business parks, and (4) serve customers in small markets like
16 Franklin, Lenoir City, Sevierville, and Cleveland, and not just in Nashville and
17 Knoxville. Conversely, the heavy capital expenditures and more complex
18 operational environment that accompanies facilities-based market entry would
19 have limited Birch’s otherwise robust geographic expansion, and would have
20 required a concentration of Birch’s marketing efforts to a relatively small area of
21 large cities. Without this expansion, Birch would not have the embedded base of
22 subscribers that it has today. Had Birch instead chosen a switched-based strategy,

1 it may well not have survived the perils of the recent capital market downturn for
2 the CLEC sector of telecommunications that has been all-too familiar.

3
4 In summary, rather than investing its capital in a technologically outdated circuit-
5 switched network, Birch decided that its time and capital were best spent
6 investing in OSS interfaces and its own customer support systems and thus
7 growing its customer base, using the most economical, efficient market
8 entry vehicle possible – UNE-P.

9
10 **Q. How does the Platform fit into Birch's prospective business plans?**

11 A. Birch's successful growth has proven that UNE-P is the only viable market entry
12 mechanism that is readily scalable to other RBOC regions and varying sized
13 markets, and to serve the mass market. Although UNE-P is at the heart of Birch's
14 success today, Birch uses UNE-P as a bridge to provisioning service over Birch's
15 own facilities, and this evolution will continue. That is, Birch does not intend to
16 serve its customers exclusively using UNE-P in perpetuity. Rather, Birch
17 leverages its existing presence by deploying its own facilities-based data network
18 (as it has done in the SWBT region) and upon completion of its plans to
19 implement an operational next-generation switched-based network, Birch intends
20 to migrate its voice and data customers to that network.

1 **Q. When will Birch deploy its next-generation network?**

2 A. As soon as possible, but we are not yet able to ubiquitously implement that
3 network, for a number of reasons. First, the next generation of switching
4 technology that is technically and commercially viable to serve the mass market
5 (i.e. “softswitches” or “packet switches” that provide typical calling features like
6 Caller ID, Call Waiting, etc.) have only recently become available. Second, as the
7 Authority is fully aware, the capital markets have been shy to invest in the
8 telecommunications industry, particularly the CLEC sector, during the current
9 economic downturn. Therefore, it is difficult to raise the capital for facilities
10 deployment in this environment. However, Birch is on a furious pace to continue
11 its access line growth using UNE-P, which will bring Birch to profitability sooner
12 rather than later, thereby enabling it to attract additional capital investment to
13 execute its overall business plan by implementing its next-generation switched-
14 based network as quickly as possible.

15
16 **Q. Has Birch taken any concrete steps toward soft switch deployment?**

17 A. Yes. For the last year, Birch has been successfully testing a fully functional soft
18 switching platform in the confines of its testing lab, has conducted limited field
19 trials of this platform in Kansas City throughout 2002, and has approached
20 Southwestern Bell to begin construction of a joint plan to integrate a softswitch
21 into network operation for expanded testing throughout the remainder of 2002. It
22 will be the natural progression for Birch to expand its next-generation network
23 into the BellSouth region, once it is deployed, stabilized and deemed scalable in

1 the Southwestern Bell region, as it has done with its UNE-P operations. While
2 time is of the essence in the implementation of Birch's business plan, the reality is
3 that this plan will not be realized overnight. Continued access to reasonably
4 priced UNE-P is critical to Birch's continued growth and viability, which will
5 allow Birch to fully execute its business plan described herein. The ability of
6 Birch and companies like it to execute their plans and successfully serve the mass
7 market – as Birch has begun to do since entering the Tennessee market – will one
8 day prove that the federal Communications Act of 1934 and the efforts of state
9 legislatures and public service commissions indeed did work to provide customers
10 with sustainable competitive alternatives in the marketplace.
11

12 **Q. Is local switching available to Birch through any vendor other than**
13 **BellSouth in BellSouth's incumbent markets?**

14 A. No. While it may be conceivable that Birch could purchase local switching from
15 a vendor other than BellSouth, we have no knowledge of any CLEC providing
16 switching to another CLEC. In fact, Birch has never been contacted by a provider
17 other than BellSouth with an offer of wholesale local switching in any BellSouth
18 market. In addition, if another CLEC were willing to provide local switching on a
19 wholesale basis, it would be wholly impractical from an operational standpoint.
20

21 **Q. Why do you believe this to be so?**

22 A. One thing that the CLEC industry has learned all too well since its inception is
23 that it is very complex to successfully operate as a CLEC. Oftentimes what

1 appears to be theoretically very simple turns out to be practically very complex,
2 labor-intensive, and replete with policy disagreements over what is required along
3 the way.¹

4
5 Because capital is so very scarce in today's markets, CLECs are constrained to
6 spend their scarce resources as judiciously as possible. The biggest bang for the
7 investor's buck, so to speak, is to focus these limited resources on operational
8 progress with the RBOCs – its high-leverage suppliers. Even at that, there are
9 numerous and significant operational hurdles that must be overcome to effectively
10 provision UNEs through an RBOC, as Birch has learned first hand through its
11 experience with SWBT and BellSouth (and those two companies have a hundred
12 years of operating experience and large teams of people dedicated to their
13 wholesale services). It is inconceivable at this point in the industry's evolution to
14 think that any CLEC could afford to dedicate the time and resources necessary to
15 gain the capability to fully operationalize its provisioning functions to either give
16 or gain widespread access to a CLEC's switching capabilities, in addition to
17 maintaining the same with the RBOC. Further, absent industry standards,
18 something as simple as a migration of a subscriber from one CLEC to another
19 CLEC is problematic and not at all consistent.

20

¹ Even Southwestern Bell ran headlong into this phenomenon when it ultimately announced a sharp curtailment in its out-of-region CLEC market expansion plans. Exhibit JMI-1 to my testimony is an article that appeared in the Atlanta Journal Constitution on March 3, 2001 reporting on SBC Telecom's (SBC's CLEC entity that operates outside its ILEC region) apparent exit from the Atlanta market, only 15 days after publicizing its launch. Although SBC agreed to compete outside of its ILEC region as part of its merger with Ameritech, the article notes that an SBC spokesperson admitted that SBC Telecom has service in only eight or nine of the 30 cities in which it promised to compete as part of the merger.

1 **Q. Earlier, you testified that Birch owns three switches. Would Birch**
2 **ever consider offering switching on a wholesale basis in conjunction**
3 **with those switches?**

4 **A. Absolutely not. Birch has neither the resources nor the expertise to develop its**
5 **business to make switching available to other CLECs.**
6

7 **Q. Does Birch offer service in any markets served by ILECs other than**
8 **Southwestern Bell and BellSouth?**

9 **A. Despite some very strategic locations of other ILEC markets and the fact that**
10 **Birch's entry into those other ILEC territories would, in many cases, allow Birch**
11 **to completely cover a particular bisected market, Birch has chosen not to do so.**
12

13 **Q. Why not?**

14 **A. Experience has proven that the incremental expense and human effort to**
15 **rigorously evolve to a state of operational readiness with a supplier other than the**
16 **RBOC does not carry a tantamount market opportunity to that which exists with**
17 **an RBOC. For example, GTE (now owned by Verizon) serves a very lucrative**
18 **and sizeable portion of the Dallas/Ft. Worth metropolitan area. Despite the**
19 **perceived value of having the operational capability to serve this portion of**
20 **Dallas/Ft. Worth, Birch could not justify to its investors a dedication of the**
21 **necessary resources that would be required to develop this capability even to a**
22 **state of operational readiness, no less actually operate in such a market. Even an**
23 **ILEC as competitively developed as GTE (Verizon) does not present a substantial**

1 enough opportunity for Birch to do this. I have first hand experience with “what it
2 takes” to become operationally ready and then to successfully operate in GTE
3 markets. Despite the fact that Verizon (an RBOC) owns and controls GTE
4 properties, the GTE properties are still backed by the legacy systems that have
5 proven to be extremely troublesome to interface with since the inception of the
6 Act.

7
8 **Q. What then does this say about the availability of local switching functionality**
9 **from a supplier other than BellSouth in Tennessee?**

10 A. Once again, if it is prohibitive financially and operationally for Birch to venture
11 into the market of as large a subtending ILEC supplier as GTE/Verizon in Texas,
12 it is inconceivable to think that – even if alternate supply was available (which it
13 is not) – Birch or any CLEC would be able to justify the expenditures necessary
14 to effectively procure switching from a non-ubiquitous supplier other than
15 BellSouth.

16
17 **Q. If the Authority were to allow BellSouth to cease provision of**
18 **local switching under the requirements of The Telecommunications Act and**
19 **the regulatory oversight of this Authority, what would Birch do?**

20 A. Absent a regulatory mandate, if BellSouth would be unwilling to provide local
21 switching under the same terms and conditions, Birch would be forced to enter
22 into negotiations over what an “acceptable commercial arrangement” would be –
23 with no leverage or recourse to speak of. Investors would lose confidence in

1 Birch's steady, successful growth patterns and more than likely, cease any and all
2 additional investments in Birch.

3
4 It is difficult for the investment community to justify its investments in a
5 company that does not have any certainty or stability underlying its business plan.
6 If Birch cannot make a solid showing of how it will successfully maintain its
7 current growth and how it plans to effectively compete using next-generation
8 technologies, Birch becomes too risky of an investment for any investor.

9
10 As discussed throughout my testimony, the Platform is the only viable market
11 entry mechanism that is readily scalable to varying sized markets with minimal
12 reliance on capital outlays, and that allows a company to gain a foothold to serve
13 the mass market. To eliminate or severely limit the certainty associated with one
14 of the most critical components of UNE-P, unbundled local switching, will likely
15 result in the elimination of the level of local service competition enjoyed by
16 Tennessee consumers today, and likely result in Birch's inability to maintain its
17 competitive existence in Tennessee. The federal Communications Act of 1934
18 and Tennessee's own market-opening efforts will have served to bring the
19 benefits of competition only to the largest and most lucrative business customers
20 – arguably those who need the benefits of lower prices the least.

1 **Q.** Does this conclude your testimony?

2 **A.** Yes. However, I do reserve the opportunity to discuss relevant and/or additional
3 unbundled local switching or UNE-P issues in rebuttal testimony or at the hearing
4 on the merits.

Attachment

JMI-1

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SBC retreats from Atlanta Texas regional telec fires 40-person staff 15 days after announcing campaign to compete with BellSouth.

BYLINE: Michael E. Kanell, STAFF

DATE: 03-03-2001

PUBLICATION: The Atlanta Journal and Constitution

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PAGE: F; 1

Just 15 days after trumpeting a full-tilt campaign to corral a hefty share of the market, **SBC Telecom** ☐ on Friday quietly fired its 40-person staff and gave fight.

☐ **SBC** ☐ had just become the first of the remaining regional phone comp jump into other markets, offering service to both residents and businesses. B

☐ **SBC** ☐ has pulled back --- at least temporarily --- from a much ballyhoc promise to spend upward of \$6 billion building networks to compete in 30 citi outside the Texas- based company's home region.

Spokeswoman Wendy Flanagan confirmed that ☐ **SBC** ☐ is "scaling dow efforts in those out-of-region cities, but company officials wouldn't release the number of job cuts nationally. The company won't seek new customers but w service those relatively few it already has, she said. "This is a slowdown, a s down in some offices, not a change in strategy," she said.

☐ **SBC** ☐ has service in "eight or nine" of the 30 cities targeted outside its state region, she said.

The company has permission to offer long-distance in just three of its home s That means it cannot offer long-distance from most of its turf to Atlanta and c new markets, Flanagan said. "We have to revise the business model, not on quarter, but continually. The rollout was built on some key assumptions that I turned out."

On Feb. 15, a company executive vowed to fight for every business and residential customer in Atlanta.

Federal regulators had conditioned their approval of [redacted] SBC [redacted] buying Chi based Ameritech on the company's promise to compete outside its region. [redacted] [redacted] said Friday it will still abide by that agreement, but its retreat risks provoking regulators who may feel the deal's spirit has been violated. [redacted] SBC [redacted] is also flirting with \$40 million-a-year Federal Communications Commission fines for complying with deadlines. But should [redacted] SBC [redacted] fail to meet all the conditions, could be whacked up to \$1.2 billion, said Michael Balmoris, spokesman for the



Earlier in the day, the \$51 billion-a-year company warned analysts that its earnings this year will be shy of expectations. Analyst Patrick Comack of Guzman & Co. that [redacted] SBC [redacted]'s competitive phone business in places like Atlanta could not be profitable until 2004. "I think they are trying to squeeze as much cost out of the operation as they can." Company priorities are delivering high-speed lines and improving customer service in its own region, he said.

Atlanta-based analyst Jeffrey Kagan said the retreat is a response to a [redacted] [redacted] downturn. "I don't look at this and say, 'they're trying to get away with something.' I have to believe that if it weren't for the changes in the market, it still be here. But this is going to frustrate consumers."

And it will no doubt infuriate advocates who say neither regional Bells nor regulators are serious about giving consumers more choice. "They justified the Ameritech merger as giving them the girth they needed to compete against other telcos like Gene Kimmelman, co-director of Consumers Union. "But in reality, they were building bigger monopolies. This demonstrates that the economy of local telephone competition does not exist."

[redacted] SBC [redacted] declined to provide specifics. But employees hired over the last months were let go in Atlanta during an emotional afternoon session in which bad news was delivered by Lisa Mosley, company vice president. Employees were apparently going to receive a severance package including eight weeks of pay and benefits. Workers at the meeting were told that Mosley will stay on for 90 days before losing her own job. Another unnamed employee will stay on to run the office.

Two weeks ago, BellSouth praised [redacted] SBC [redacted]'s entry as further proof that the market was open to rivals as required. On Friday, BellSouth spokesman Jeff

Battcher declined to comment on  **SBC** 's decision.



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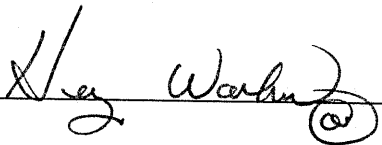
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 19th day of July, 2002.

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A handwritten signature, "Alex Warburton", is written over a horizontal line. The signature is in cursive and includes a circled "a" at the end.